

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WILL-RICH AIR CONTROL, INC.

and

Case 22--CA--17066

SHEET METAL WORKERS, LOCAL 22  
OF NEW JERSEY

DECISION AND ORDER

*By Chairman Stephens and members Crockett and Rudolph*  
Upon a charge filed by the Union on June 6, 1990,<sup>1</sup> the General Counsel of

the National Labor Relations Board issued a complaint on July 20 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On September 17, the General Counsel filed a Motion for Summary Judgment. On September 20, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not

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<sup>1</sup> All dates are in 1990.

filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated August 6, notified the Company that unless an answer was received by August 13, a Motion for Summary Judgment would be filed. The Respondent did not file an answer to the complaint.

In the absence of good cause shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### Findings of Fact

##### I. Jurisdiction

The Company is a corporation with office and place of business in Bellemeade, New Jersey, and a fabrication shop in Roselle, New Jersey, where it is engaged in the manufacture and installation of air conditioning and heating duct systems. During the past 12-month period, the Respondent, in the course and conduct of its business operations, purchased and received at its Bellemeade and Roselle, New Jersey facilities products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New Jersey. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All residential sheet metal workers and apprentices including those employees involved in the fabrication, erection, installation, repairing, replacing and servicing of residential heating and air conditioning systems, architectural sheet metal work, solar heating and air conditioning, employed by Respondent at its Bellemeade and Roselle, New Jersey facilities, excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

At all times material the Union has been recognized as the exclusive collective-bargaining representative of the Respondent's employees in the unit described above. Such recognition has been embodied in a series of collective-bargaining agreements, including the agreement in effect at all times material. The Union continues to be the exclusive representative under Section 9(a) of the Act.

On or about March 5, the Union and the Respondent reached full and complete agreement with respect to terms and conditions of employment of the unit employees to be incorporated in a collective-bargaining agreement between them. Since on or about April 1, the Union has requested the Respondent to execute a written contract embodying the above agreement and since that date the Respondent has failed and refused to do so.

Since on or about May 23, the Respondent failed to timely notify the Union of its decision to cease operations, thereby depriving the Union of an opportunity to bargain concerning the effects of that decision on unit employees. Further, since on or about that same date, the Respondent unilaterally discontinued its employees' health insurance and vacation benefits and unilaterally changed their contractual rate of pay. These actions were taken without prior notice to the Union and thus the Union was not afforded an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to these acts. Finally, since on or about May 24, the Respondent bypassed the Union and dealt

directly with its unit employees by soliciting them to enter into individual employment contracts.

On the basis of the foregoing, we find that the Respondent has, since April 1, refused to bargain collectively and in good faith with the Union as the exclusive representative of the employees in the unit set forth above, and that by such refusal the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### Conclusions of Law

The Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act by

1. Failing and refusing to execute a written contract embodying the collective-bargaining agreement reached between the parties, though requested to do so by the Union.

2. Failing to timely notify the Union of its decision to cease operations, thereby depriving the Union of an opportunity to bargain concerning the effects of that decision on unit employees.

3. Unilaterally discontinuing its unit employees' health insurance and vacation benefits and unilaterally changing their contractual rate of pay.

4. Bypassing the Union and dealing directly with its unit employees by soliciting them to enter into individual employment contracts.

#### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully failed and refused to execute a collective-bargaining agreement agreed on by the parties, we shall

order the Respondent to execute that agreement and to make the employees whole, with interest, for any losses they may have suffered as a result of the Respondent's unlawful failure and refusal to execute the agreement, with lost earnings and interest to be computed in the manner prescribed in Ogle Protection Service, 183 NLRB 682 (1970), and New Horizons for the Retarded, 283 NLRB 1173 (1987), respectively.

To remedy the Respondent's unlawful refusal to bargain about the effects of its decision to cease operations, we shall order it to bargain with the Union, on request, concerning the effects of its decision. We shall accompany the bargaining order with a limited backpay requirement designed to make whole the employees for losses sustained as a result of the violation, and to recreate in some practicable manner a situation in which the parties' bargaining positions are not entirely devoid of economic consequences for the Respondent. Therefore, we shall require the Respondent to pay backpay to its employees in a manner similar to that required in Transmarine Corp., 170 NLRB 389 (1968). We shall order the Respondent to pay employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union concerning the effects on unit employees of its decision to cease operations; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of these employees exceed the amount each would have earned as wages from the time the Respondent ceased operations to the time each secured equivalent employment

elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs first; provided, however, that in no event shall this sum be less than such employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on backpay shall be paid in the manner prescribed in New Horizons, above.

We shall further order the Respondent to restore the health insurance coverage and to make the unit employees whole for any losses they may have incurred as a result of the Respondent's unilateral change in their insurance coverage, as provided in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Reimbursement shall be with interest as prescribed in New Horizons, above. The method of determining the amount owed to the insurance fund and any interest thereon is specified in Merryweather Optical Co., 240 NLRB 1213 (1979). We shall also order the Respondent to reinstate vacation benefits and the contractual rate of pay for its unit employees, and make them whole for any losses they may have suffered as a result of that unlawful conduct as prescribed in Ogle Protection Service, 183 NLRB 682 (1970), with interest as prescribed in New Horizons.

#### ORDER

The National Labor Relations Board orders that the Respondent, Will-Rich Air Control, Inc., Bellemeade, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Sheet Metal Workers, Local 22 of New Jersey as the exclusive representative of the employees in the appropriate unit by failing and refusing to execute a written contract embodying the collective-bargaining agreement between the Respondent and the Union. The appropriate unit is

All residential sheet metal workers and apprentices including those employees involved in the fabrication, erection, installation, repairing, replacing and servicing of residential heating and air conditioning systems, architectural sheet metal work, solar heating and air conditioning, employed by Respondent at its Bellemeade and Roselle, New Jersey facilities, excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

(b) Refusing to bargain with the Union about the effects on unit employees of its decision to cease operations.

(c) Unilaterally discontinuing its unit employees' health insurance and vacation benefits and unilaterally changing their contractual rate of pay.

(d) Bypassing the Union by soliciting unit employees to enter into individual employment contracts.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request by the Union, execute the written contract embodying the collective-bargaining agreement between the Respondent and the Union.

(b) On request by the Union, bargain with the Union as the exclusive representative of its employees in the above described unit about the effects of its decision to cease operations and pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision.

(c) Make the unit employees whole for any loss of earnings or benefits suffered as a result of the Respondent's failure and refusal to sign and give effect to the written contract embodying the agreement between the Respondent and the Union, in the manner set forth in the remedy section of this decision.

(d) Make the unit employees whole for any loss of earnings or benefits suffered as a result of the Respondent's unilateral discontinuation of health

insurance and vacation benefits and its unilateral change in the contractual rate of pay, in the manner set forth in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records and reports, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facilities in Bellemeade and Roselle, New Jersey, copies of the attached notice marked "'Appendix.'"<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.      October 26, 1990

James M. Stephens, Chairman

Mary Miller Cracraft,	Member
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John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Sheet Metal Workers, Local 22 of New Jersey as the exclusive collective-bargaining representative of the employees in the unit described below, by failing and refusing to execute a written contract embodying our collective-bargaining agreement with the Union. The unit is:

All residential sheet metal workers and apprentices including those employees involved in the fabrication, erection, installation, repairing, replacing and servicing of residential heating and air conditioning systems, architectural sheet metal work, solar heating and air conditioning, employed by the Respondent at its Bellemeade and Roselle, New Jersey facilities, excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain with the Union about the effects on unit employees of our decision to cease operations.

WE WILL NOT unilaterally discontinue your health insurance and vacation benefits or unilaterally change your contractual rate of pay.

WE WILL NOT bypass the Union by soliciting you to enter into individual employment contracts.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request by the Union, execute the written contract embodying the collective-bargaining agreement between us and the Union.

WE WILL, on request by the Union, bargain with it as the exclusive representative of the unit employees about the effects of our decision to cease operations and WE WILL pay the unit employees limited backpay, plus interest, as required by the National Labor Relations Board.

WE WILL make each of the unit employees whole, with interest, for any loss of earnings they may have suffered by reason of our failure and refusal to execute the collective-bargaining agreement between the Union and us.

WE WILL make each of the unit employees whole, with interest, for any loss of earnings or benefits suffered as a result of our unilaterally discontinuing health insurance and vacation benefits and our unilaterally changing the contractual rate of pay.

WILL-RICH AIR CONTROL, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 970 Broad Street, Room 1600, Newark, New Jersey 07102-2570, Telephone 201--645--3652.